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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20482A-06-0631

EDWARD A. PURVIS and MAUREEN H.
PURVIS, husband and wife
2131 W. Shannon
Chandler, Arizona 85224

**SECURITIES DIVISION'S
RESPONSE TO PURVIS' MOTION
TO COMPEL**

GREGG L. WOLFE and ALLISON A. WOLFE,
husband and wife
2092 W. Dublin Lane
Chandler, Arizona 85224

NAKAMI CHI GROUP MINISTRIES
INTERNATIONAL, (a/k/a NCGMI), a Nevada
corporation sole
4400 N. Scottsdale Road, Suite 9-231
Scottsdale, Arizona 85251

JAMES W. KEATON, Jr. and JENNIFER
KEATON, husband and wife
11398 E. Whitehorn Drive, Apt. D
Scottsdale, Arizona 85255

ACI HOLDINGS, INC., a Nevada
corporation
17650 N. 25th Avenue
Phoenix, Arizona 85023

Respondents.

Arizona Corporation Commission
DOCKETED

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The Securities Division (the "Division") of the Arizona Corporation Commission (the
"ACC") hereby responds to Respondent Purvis' Motion to Compel Production of Keating (sic)/
ACI/CIS (sic) Documents Pursuant to Subpoena and Unredacted Documents from Securities

1 Division (“Purvis’ Motion to Compel” or “Motion to Compel”) filed by Respondents Edward and
2 Maureen Purvis (“Purvis Respondents”) as follows:

3 A. The Purvis Respondents cannot compel documents when the production was
4 voluntary.

5 The Respondents used the phrase “Motion to Compel” in their latest filing, yet there has to
6 be an order that has been breached or a legal obligation that has been disregarded for the Division
7 to be “compelled.” No subpoena issued to the Division and the Division has complied with all
8 orders in this proceeding. Additionally, to the extent that the Division *voluntarily* gave the Purvis
9 Respondents access to the Keaton Entities’ documents, there is no authority to compel *voluntary*
10 production from the Division. The Purvis Respondents do not cite any authority for compelling
11 documents from the Division, let alone un-redacted copies of documents.

12 B. The Purvis Respondents fail to provide any legal basis to authorize the Division to
13 provide un-redacted records.

14 In this case, the Purvis Respondents were *voluntarily* given access by the Division to redacted
15 copies of documents received from the Keaton Entities. The Purvis Respondents did not attempt to
16 review the records, nor did they bother to have them copied. Clearly the Purvis Respondents are not
17 interested in actually securing the information as they have not availed themselves of what has been
18 provided. Instead, they demand un-redacted copies. In their motion, the Purvis Respondents state
19 that “the Securities Division has redacted witness names” and other information from the records.
20 (See footnote 1 to Purvis Respondents Motion to Compel). Perhaps the Purvis Respondents should
21 review the documents first before making claims about what information has been redacted. The
22 Division has never represented that witness names were redacted. Not only have witness names not
23 been redacted, witness names were provided to the Purvis Respondents by the Division as required by
24 Judge Stern.

25 The Division *voluntarily* gave access to records and only redacted the confidential identifying
26 information it is legally required to redact. See A.R.S. §§ 44-2042 , 44-3300, 44-1373, 44-7501, 41-

1 4172. The Purvis Respondents overstate the redactions which they have not even bothered to review,
2 although they have had a month to do so. (*See* Exhibit B to Purvis' Motion to Compel).

3 The Purvis Respondents request that this court compel the Division to provide un-redacted
4 copies but provide no legal basis for their request.

5 C. The Purvis Respondents fail to demonstrate any "reasonable need" for the Keaton
6 Entities' financial records.

7 Additionally, it appears that Purvis Respondents are now requesting the Division be
8 required to provide particular financial records of the Keaton Entities one month before the
9 hearing. This tribunal must not consider this request because it is a late request for discovery
10 interposed to delay the hearing. To the extent this tribunal will entertain the late request, the Purvis
11 Respondents fail to state *reasonable need* for the records. The rules of civil procedure for
12 discovery **do not** apply in administrative proceedings. *See, e.g., Pacific Gas and Elec. Co.*, 746
13 F.2d 1383, 1387 (9th Cir. 1984); *Silverman v. Commodity Futures Trading Comm'n*, 549 F.2d. 28,
14 33 (7th Cir. 1977); *NLRB v. Vapor Blast Mfg. Co.*, 287 F.2d 402, 407 (7th Cir. 1961). In civil
15 proceedings the discovery standard is relevance. Ariz. R. Civ. Pro. 26(b). In this administrative
16 forum, Respondents need to show "reasonable need," not relevance. A.R.S. § 41-1062.

17 Although the financial information sought by the Purvis Respondents, may be "relevant" to
18 the financial condition of the Keaton Entities, it is not *reasonably needed* by the Respondents to
19 defend themselves in these proceedings. In fact, the Purvis Respondents' application for the
20 subpoenas that issued to the Keaton Entities was entitled, "Notice of Request for Issuance of
21 Subpoenas Duces Tecum" ("notice"), it was filed September 10, 2007. Importantly, the "notice"
22 did not contain any request that the Administrative Judge make a finding of "reasonable need" for
23 the information; instead it simply stated that the Division refused to provide the documents the
24 Keaton Entities had provided to the Division to them. Again, simply not having access to
25 particular records does independently establish a reasonable need for them.

26 ///

1 It is especially important from a policy standpoint that this tribunal not merge the civil
2 discovery rules into the administrative arena by permitting the scope of discovery to be relevance,
3 as it would have many deleterious results, including: (1) allowing respondents to access
4 confidential investigative information far removed from the witnesses and exhibits relevant to the
5 active case against them; (2) allowing respondents to protract the proceedings indefinitely; (3)
6 allowing respondents to excessively consume scarce but vital resources better expended on other
7 matters necessary for the protection of the public; and (4) allowing respondents to force the agency
8 into the position of a civil litigant rather than into its proper role as a governmental regulatory
9 authority.

10 Undoubtedly the Purvis Respondents will now argue that the financial records are needed
11 because the Keaton Entities refuse to provide them; however, this does not independently establish
12 reasonable need for these records. The Purvis Respondents have been charged with securities
13 violations under strict liability statutes. *See Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548,
14 553, 733 P.2d 1131 (1986); *State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604 (1980); *Aaron v.*
15 *Fromkin*, 196 Ariz. 224, 227, 314 P.2d 1039, 1042 (App. 2000); *Rose v. Dobras*, 128 Ariz. 209,
16 211, 624 P.2d 887 (App.1981). The Division does not intend to use the financial records of the
17 Keaton Entities that are sought by the Purvis Respondents. They therefore have not been disclosed.
18 The Purvis Respondents fail to state a reasonable need for the financial records and in the absence of a
19 finding of "reasonable need," this tribunal may not authorize or order the disclosure.

20 F. Conclusion

21 The Purvis Respondents have been afforded multiple continuances of the administrative
22 hearing and ample opportunity to conduct discovery and prepare for the hearing. Therefore their
23 belated requests for additional discovery should be denied. Further, the Purvis Respondents fail to
24 show that they have any "reasonable need" for the records they are now requesting. Even if the
25 court found reasonable need for some of the records and ordered they be provided, there is no legal
26

1 authority to order the Division to disclose an un-redacted version of records that were redacted to
2 comply with the law. Therefore, the Division requests this Court deny the Purvis Respondents
3 Motion to Compel.

4
5 RESPECTFULLY SUBMITTED this 12 day of October, 2007.

6
7 By



Shoshana O. Epstein
Attorney for the Securities Division of the
Arizona Corporation Commission

1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
2 filed this 12th day of October, 2007, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered this
8 12th day of October, 2007, to:

9 ALJ Marc Stern
10 Arizona Corporation Commission/Hearing Division
11 1200 West Washington
12 Phoenix, AZ 85007

13 COPY of the foregoing mailed
14 this 12th day of October, 2007, to:

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